

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**CHRISTOPHER MIGUEL JUSTICE,
No. 1022986,**

Plaintiff,

V.

CIVIL NO. SA-16-CA-243-XR (JWP)

**SUSAN PAMERLEAU, Sheriff
RAUL BANASCO, Jail Administrator,
BRENNA PLATA, Mail Room Supervisor,
Dr. BRIAN P. SKOP,
Lieutenant FNU PADILLA, Classifications,
LINDA GARZA, Law Library Supervisor,
Lieutenant FNU KRAMER,
Lieutenant FNU BEARD,
MICHAEL FLORES,
Sergeant FNU MacCALLISTER,
Sergeant FNU FLOOD,
Sergeant FNU JONES,
Sergeant FNU BERRY,
Officer FNU OLIVERA, and
BEXAR COUNTY HOSPITAL DISTRICT
d/b/a UNIVERSITY HEALTH SYSTEM,**

Defendants.

ORDER

Plaintiff filed a pro se pleading April 26, 2016 (ECF no. 10) which this Court liberally construes as a Notice of Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(1).

Background

Plaintiff Christopher Miguel Justice, currently an inmate at the Bexar County Adult Detention Center (“BCADC”), filed a civil rights action pursuant to 42 U.S.C. § 1983 naming as defendants a number of supervisory BCADC officials and employees, as well as the University Health System and alleging (1) Sheriff Pamerleau, Jail Administrator Banacso, and Lieutenant

Padilla engaged in unspecified acts of discrimination, negligence, and deliberate indifference toward Plaintiff, (3) mail room supervisor Plata has engaged in unspecified acts of mail tampering, discrimination, and negligence, (4) Lieutenant Padilla took pages of an unidentified medical record that had been given to Plaintiff by the VA Board of Veterans Appeal, and (5) Dr. Skop intentionally included false and misleading information in a report dated September 25, 2015, addressing Plaintiff's competence to stand trial.¹ Plaintiff requested monetary damages in excess of thirty million dollars, unspecified injunctive relief, as well as appointment of counsel. Plaintiff failed to either pay the filing fee or to file a complete application for leave to proceed In Forma Pauperis, including a certified copy of his BCADC inmate trust account statement, as required by 28 U.S.C. §1915(a)(2).

In a Show Cause Order issued March 17, 2016 (ECF no. 4), the Magistrate Judge directed Plaintiff to fulfill his financial obligations regarding the filing fee or file a complete In Forma Pauperis application and to amend his complaint to address numerous defects which rendered Plaintiff's original complaint subject to dismissal as frivolous. Thereafter, Plaintiff filed multiple motions seeking leave to amend his complaint to add new claims and parties (ECF nos. 5, 6, & 8), but made no effort to address the deficiencies identified in the original complaint by the Magistrate Judge.

¹ This is the third action filed by Plaintiff in recent months, all of which Plaintiff has now voluntarily dismissed after disregarding this Court's Show Cause Orders, refusing to furnish the filing fee or a complete In Forma Pauperis application, and filing frivolous motions. Plaintiff's other frivolous lawsuits were docketed in this Court as cause nos. SA-15-CA-1031-RP, styled *Justice v. Plata, et al.* (voluntary dismissal notice filed March 3, 2016 - after expiration of deadline for filing response to order on more definite statement) and SA-16-CA-283-FB, styled *Justice v. State of Texas* (voluntary dismissal notice filed April 12, 2016 - after expiration of deadline for responding to Show Cause Order).

Analysis


Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure provides a plaintiff may, without Order of the Court, voluntarily dismiss an action by filing a notice of voluntary dismissal before the opposing party serves either an answer or a motion for summary judgment. A plaintiff has an “absolute right” to a Rule 41(a)(1) dismissal. *Yesh Music v. Lakewood Church*, 727 F.3d 356, 360 (5th Cir. 2013); *Harvey Specialty & Supply, Inc. v. Anson Flowline Equip. Inc.*, 434 F.3d 320, 324 (5th Cir. 2005). The defendant has not yet appeared in this lawsuit. This Court will liberally construe Plaintiff’s pro se motion to dismiss as a notice of voluntary dismissal pursuant to Rule 41(a)(1)(A)(i).

Accordingly it is hereby **ORDERED** that:

1. The referral of this cause to the Magistrate Judge is **WITHDRAWN**.
2. Plaintiff’s motion to dismiss, filed April 26, 2016 (ECF no. 10) will be construed as a notice of voluntary dismissal and this cause is **DISMISSED WITHOUT PREJUDICE**.
3. All pending motions are **DISMISSED as moot**.

It is so ORDERED.

SIGNED this 26th day of April, 2016.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE